IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1105 OF 2004

IN

SUIT NO.892 OF 2004

...

Smt.Ritu K. Rajpal ...Plaintiff

v/s.

Smt.Chitra P.Chhabra

and ors. ...Defendants

...

Mr.B.B.Saraf i/b Sunil & Co. for the Plaintiff.

Mr.P.G.Sabnis for Defendants Nos. 1 to 5.

...

CORAM: D.K.DESHMUKH, J.

DATED: 31ST MARCH,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff for an order of temporary injunction restraining the Defendant Nos. 1 to 5 from disposing of the suit property. The suit property is a flat, being Flat No.1002, at Triveni Sangam Co.op. Hsg. Society Ltd., Sangam Apartment, 10th Floor, G.D.Road (Pedder Road), Mumbai-26, which admittedly was owned by mother of the Plaintiff, predecessor-in-title of the Defendants Nos. 1 to 5 and also of the Defendant No.6. The name of the predecessor-in-title of the Defendants Nos. 1 to 5 was Pradeep. He was brother of the Plaintiff and Defendant No.6. On the death of the mother, her share will be inherited by the Plaintiff, the Defendant No.6, who are daughters and heirs of Pradeep.

2. The defence of the Defendants Nos. 1 to 5 is that the deceased mother of the Plaintiff had left behind a Will and by that will her share was

bequeathed to them. Admittedly, the Will is not probated, though probate petition has been filed. Till the Defendants Nos. 1 to 5 obtain the probate, they can not sell the property. The Plaintiff has right to raise objection in the probate petition.

3. In this view of the matter, therefore, in my opinion, it will not be appropriate to permit the Defendants Nos. 1 to 5 to transfer the property. In my opinion, therefore, following order would meet the ends of justice.

O R D E R

(i) Defendants Nos. 1 to 5 are restrained from selling, disposing of, alienating or part with possession or transferring the suit flat during the pendency of the suit.

(ii) Defendants Nos. 1 to 5 shall be at liberty to apply for modification of this order, in case, probate of the will is granted in their favour.

Notice of Motion disposed of.

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